



## **Request for City Council Committee Action from the Information Technology Department**

Date February 19, 2013

To: The Honorable Betsy Hodges, Chair, Ways and Means Committee

Subject: Contract Terms with IBM for Intelligent Operations Platform (IOP) software and implementation services

Recommendation: Authorize proper City officials to establish the following terms and conditions with IBM as part of the three-year contact for Intelligent Operations Platform (IOP) software and implementation services:

- 1) Customize the liability terms and conditions
- 2) Customize contract language regarding support and maintenance personnel.

Prepared by Elise Ebhardt, Interagency Coordinator, 612-673-2026

Submitted by Otto Doll \_\_\_\_\_, 673-3633  
Chief Information Officer

Approved by Paul Aasen \_\_\_\_\_  
City Coordinator

Presenter in Committee Otto Doll

Policy Review Group   X   Not Applicable

Permanent Review Committee (PRC)   X   Not Applicable

### **Prior Related Directives:**

- April 29, 2011: IBM First-of-a-Kind (FOAK) Grant – Approval to accept \$1.5 million grant from IBM and provide 10% City match.
- December 7, 2012: IBM Intelligent Operations Platform Contract - Authorize execution of three-year contract with IBM for IOP software and implementation services, in an amount not to exceed \$2,871,640.

**Financial Impact:** None. No additional appropriation is required.

**Financial Impact** (Check those that apply)

- ☒ No financial impact (If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☐ Other financial impact (Explain):
- ☒ Request provided to department's finance contact prior to the Committee Coordinator

**Background/Supporting Information**

On April 29, 2011 the City Council voted to accept a grant of \$1.5 million from IBM's *Smarter Cities* First-of-a-Kind (FOAK) program, and authorized \$150,000 in City matching funds to participate. Since approval of the grant, the City has partnered with IBM to create a solution for cross-department coordination and analytics to improve services and decision making in a number of areas.

The City and IBM are moving into the second phase of the project where a city-wide Intelligent Operations Platform (IOP) will be built and implemented to provide robust informational exchanges, analytics and predictive capabilities.

As approved by City Council on December 12, 2012, IT and City Attorney staff are in the process of executing a three year contract with IBM for the IOP software and implementation services. We are using contract agreements that the State of Minnesota and federal governments have established with IBM as the basis for our contract liability terms with IBM.

**Request for Approval**

IT and City Attorney staff request City Council approval to move forward with the following contract terms:

- 1) Customize the liability terms and conditions to delineate IBM's limitations of liability as follows:
  - a. Defense of City by IBM and no cap on intellectual property claims or tort claims made by third parties against the City;
  - b. Cap on direct damages for breach of contract claims by City against IBM with a cap equal to the amount of direct damages up to the greater of \$100,000 or a ceiling of twelve months of fees paid by the City during the term of an agreement;
  - c. No liability for consequential damage claims may be made by the City based upon the City's direct claims or claims made by third parties against the City or IBM;
  - d. No liability for claims made for damage or loss of City data or information.These limitations on liability are the aggregate amount for which IBM and its subcontractors and program developers are responsible.
- 2) Customize contract language regarding personnel who are providing support and maintenance services. IBM cannot guarantee that all support and maintenance services will be provided by personnel within the United States. While the IOP data center will be located in the United States, calls for technical support may be handled outside of the U.S.